



## Proposed Regulation Agency Background Document

<b>Agency name</b>	Real Estate Board
<b>Virginia Administrative Code (VAC) citation</b>	18 VAC135-50
<b>Regulation title</b>	Fair Housing Regulations
<b>Action title</b>	Amending regulations to incorporate needed changes
<b>Date this document prepared</b>	6-14-11

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Brief summary

*In a short paragraph, please summarize all substantive provisions of new regulations or changes to existing regulations that are being proposed in this regulatory action.*

The changes being incorporated in this action include updating the following sections: definitions; purpose; scope; discriminatory advertisements, statements and notices; general prohibitions against discrimination because of handicap; use of words, phrases, symbols and visual aids; fair housing policy and practices; date of filing complaint; investigations and completion of investigation. The proposed changes are being made to ensure consistency with federal and state law.

### Acronyms and Definitions

*Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the "Definition" section of the regulations.*

### Legal basis

*Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly*

*chapter number(s), if applicable, and (2) promulgating entity, i.e., the agency, board or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.*

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Section 2.2-4017 of the Code of Virginia provides that regulations shall be periodically reviewed as mandated by Executive Order of the Governor. In 2006, Executive Order 36 (2006) issued by the Governor of Virginia required that all existing regulations be reviewed at least once every four years to ensure the regulations are supported by statutory authority and every five years to ensure the regulations economic impact on small businesses is minimized as much as possible. Executive Order 14 (2010) likewise requires existing regulations to be periodically reviewed every four years. Since the regulations regarding the Fair Housing Law were last reviewed in 2003, the Real Estate Board and Fair Housing Board elected in 2008 to begin this periodic review of regulations.

Section 54.1-2105.A of the Code of Virginia states that the Real Estate Board “may do all things necessary and convenient for carrying into effect the provisions of this chapter and may promulgate necessary regulations.” In accordance with § 54.1-2344.D of the Code of Virginia, the Real Estate Board is responsible for the administration and enforcement of the Fair Housing Law with respect to real estate licensees, their agents, or their employees and the Fair Housing Board is responsible for the administration and enforcement of the Fair Housing Law with respect to all others who allegedly violated or violated the Fair Housing Law. Section 36-96.8.B of the Code of Virginia permits the Real Estate Board and Fair Housing Board to coordinate the promulgation and amendment of necessary regulations to carry out the provisions of the Fair Housing Law.

### Purpose

*Please explain the need for the new or amended regulation by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal, the environmental benefits, and the problems the proposal is intended to solve.*

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It is the policy of the Commonwealth of Virginia to ensure that all Virginia citizens are provided access to residential housing free from illegal discrimination. Through this periodic review of regulations, the Real Estate Board and Fair Housing Board provide clarification of the provisions of the Fair Housing Law, ensure that the regulations are consistent with Federal and State law, and provide guidance regarding the provisions of the Fair Housing Law.

### Substance

*Please briefly identify and explain new substantive provisions (for new regulations), substantive changes to existing sections or both where appropriate. (More detail about all provisions or changes is requested in the “Detail of changes” section.)*

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The substantive changes proposed by the Real Estate Board and Fair Housing Board clarify definitions and other aspects of the provisions of the Fair Housing Law, provide guidance regarding the Fair Housing Law’s provisions for disabled persons, and amend information regarding advertising.

135-50-10 Amend definitions such as “authorized representative” for clarity.

135-50-20 Clarify purpose section. For example, clarify discriminatory conduct covered by the Virginia Fair Housing Law.

135-50-50 Clarify scope section to ensure it encompasses the scope of the Virginia Fair Housing Law.

135-50-110 Amend discriminatory, advertisements, statements and notices to include update language for publisher’s notices.

135-50-200 Amend general prohibitions against discrimination because of handicap to include new definitions such as “disability”; from where to obtain ANSI A117.1 accessibility standards and to include guidance document references for reasonable accommodations and reasonable modifications.

135-50-270 Amend list of words indicative of protected classes to ensure consistency.

135-50-290 Amend fair housing policy and practices to ensure individuals know how to obtain equal housing logos, statement, or slogan.

135-50-350 Clarify the procedure for determining the date of filing a fair housing complaint.

135-50-400 Clarify the administrator’s duties.

135-50-440 Clarify when investigations are complete.

**Issues**

*Please identify the issues associated with the proposed regulatory action, including:*  
1) *the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*  
2) *the primary advantages and disadvantages to the agency or the Commonwealth; and*  
3) *other pertinent matters of interest to the regulated community, government officials, and the public.*

*If the regulatory action poses no disadvantages to the public or the Commonwealth, please indicate.*

The primary advantage to the public is ensuring the regulations are consistent with Federal and State law, and provide guidance regarding the provisions of the Fair Housing Law.

The primary advantage to the agency will be that the agency can better protect the health, welfare and safety of the citizens of Commonwealth by having regulations which are consistent with Federal and State law.

No disadvantages to the public or to the Commonwealth have been identified.

**Requirements more restrictive than federal**

*Please identify and describe any requirements of the proposal, which are more restrictive than applicable federal requirements. Include a rationale for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.*

There are no requirements which exceed federal requirements.

**Localities particularly affected**

*Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.*

There are no known localities which will be particularly affect by the proposed regulation.

**Public participation**

*Please include a statement that in addition to any other comments on the proposal, the agency is seeking comments on the costs and benefits of the proposal and the impacts of the regulated community.*

In addition to any other comments, the board/agency is seeking comments on the costs and benefits of the proposal and the potential impacts of this regulatory proposal. Also, the agency/board is seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments may do so via the Regulatory Townhall website, [www.townhall.virginia.gov](http://www.townhall.virginia.gov), or by mail, email or fax to Christine Martine, DPOR, Real Estate Board, 9960 Mayland Drive, Suite 400, Henrico, VA 23233, 804-367-8552, Fax 866-350-7849, [reboard@dpor.virginia.gov](mailto:reboard@dpor.virginia.gov). Written comments must include the name and address of the commenter. In order to be considered, comments must be received by the last date of the public comment period.

A public hearing will be held and notice of the public hearing may appear on the Virginia Regulatory Town Hall website ([www.townhall.virginia.gov](http://www.townhall.virginia.gov)) and the Commonwealth Calendar. Both oral and written comments may be submitted at that time.

**Economic impact**

*Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirements create the anticipated economic impact.*

<b>Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source, and (b) a delineation of one-time versus on-going expenditures.</b>	See below.
<b>Projected cost of the <i>new regulations or changes to existing regulations</i> on localities.</b>	See below.
<b>Description of the individuals, businesses or other entities likely to be affected by the <i>new regulations or changes to existing regulations</i>.</b>	See below.
<b>Agency’s best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses</b>	See below.

<p><b>affected.</b> Small business means a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</p>	
<p><b>All projected costs of the <i>new regulations or changes to existing regulations</i> for affected individuals, businesses, or other entities. Please be specific and include all costs. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses. Specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the proposed regulatory changes or new regulations.</b></p>	<p>See below.</p>
<p><b>Beneficial impact the regulation is designed to produce.</b></p>	<p>See below.</p>

The current Fair Housing regulations, which apply to both the Real Estate Board and the Fair Housing Board, are being revised to provide clarity in various sections of the regulations and to ensure consistency with Federal and State Fair Housing laws. Clarifications are being made to definitions, scope, advertising, and time for filing complaints. No fiscal impact is expected as a result of these changes.

All costs incurred in support of board activities and regulatory operations are paid by the department and funded through fees paid by applicants and licensees. All boards within the Department of Professional and Occupational Regulation must operate within the Code provisions of the Callahan Act (54.1-113), and the general provisions of 54.1-201. Each regulatory program's revenues must be adequate to support both its direct costs and a proportional share of agency operating costs. The department allocates costs to its regulatory programs based on consistent, equitable, and cost-effective methodologies. The board has no other source of income.

**Fiscal Impact:**

	FY 2012	FY 2013	FY2014	FY2015
Fund	NGF (0900)	NGF (0900)	NGF (0900)	NGF (0900)
Program/Service Area	560 46	560 46	560 46	560 46

Impact of Regulatory Changes:				
One-Time Costs	0	0	0	0
Ongoing Costs	0	0	0	0
Total Fiscal Impact	0	0	0	0
FTE	0.00	0.00	0.00	0.00

**Description of Costs:**

One-Time: No one-time costs are expected as a result of this regulatory change.

Ongoing: No ongoing costs are expected as a result of this regulatory change.

**Cost to Localities:** No change anticipated.

**Description of Individuals, Businesses, or Other Entities Impacted:** The revised regulations apply to all Real Estate Board licensees and Fair Housing Board certificate holders. Any person in the business of selling or renting dwellings is also affected.

**Estimated Number of Regulants:** There are approximately 60,000 individual regulants and 8,300 business regulants.

**Projected Cost to Regulants:** There is no anticipated additional cost to the regulants.

**Alternatives**

*Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in §2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.*

Failure to adopt these changes will result in regulations not being as clear as possible. No viable alternatives could be determined.

**Regulatory flexibility analysis**

*Please describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.*

The agency considers the proposed changes as the least burdensome and no other alternatives were identified. The proposed regulations do not impact small businesses any differently than other businesses.

**Public comment**

*Please summarize all comments received during the public comment period following the publication of the NOIRA, and provide the agency response.*

The agency received no public comment.

Commenter	Comment	Agency response
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**Family impact**

*Please assess the impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one’s spouse, and one’s children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.*

The proposed changes are not expected to have an impact on families.

**Detail of changes**

*Please list all changes that are being proposed and the consequences of the proposed changes. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact if implemented in each section. Please describe the difference between the requirements of the new provisions and the current practice or if applicable, the requirements of other existing regulations in place.*

*If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all provisions of the new regulation or changes to existing regulations between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.*

For changes to existing regulations, use this chart:

<b>Current section number</b>	<b>Proposed new section number, if applicable</b>	<b>Current requirement</b>	<b>Proposed change, rationale, and consequences</b>
135-50-10	n/a	Definitions	Amend definitions such as “authorized representative” and “Board”. The rationale is to clarify that “Board” can mean either the Fair Housing Board and Real Estate Board collectively or each Board individually.
135-50-20	n/a	Sets forth the Boards’ interpretation of the Fair Housing Law	The proposed change clarifies that the purpose of these regulations is to cover all discriminatory conduct prohibited by the Fair Housing Law.
135-50-50	n/a	Establishes that it is the policy of Virginia to provide within constitutional limits fair housing protections substantially equivalent to	The proposed change clarifies that the scope of these regulations covers all discriminatory conduct prohibited by the Fair Housing Law.

		those granted under federal law.	
135-50-110	n/a	Requires publishers to include a non-discrimination notice at the beginning of real estate advertising sections.	Amend to include updated language for publisher’s notices. The rationale is to set forth in this regulation the referenced publisher’s notice which is found in the Code of Federal Regulations (“C.F.R.”) published by the federal government.
135-50-200	n/a	Prohibits housing discrimination against persons because of “handicap.”	The proposed changes amend the definition of “handicap” to be synonymous with the term “disability”; update the publisher’s information for obtaining copies of the ANSI A117.1 accessibility standards; and incorporate by reference federal guidance documents regarding reasonable accommodations and reasonable modifications. The use of the term “disability” and its variations is now preferred over “handicap” and the U.S. Supreme Court has ruled the terms are synonymous. The ANSI A117.1 information is updated to provide citizens with the current information on where those standards can be purchased. Since reasonable accommodations and reasonable modifications complaints are one of the leading complained-of discriminatory practices, the Boards seek to incorporate guidance documents on these issues developed by the U.S. Dept. of Housing and Urban Development (“HUD”) and the U. S. Dept. of Justice (“DOJ”) to provide citizens with guidance on complying with the reasonable accommodation/modification provisions of the Fair Housing Law.
135-50-270	n/a	Provides a list of words that may convey overt or tacit discriminatory preferences or limitations.	Amend list of words indicative of protected classes. The rationale of this proposed change is to update the list of words that may indicate a discriminatory preference or limitation with regard to residential housing.
135-50-290	n/a	Informs public of suggested use of the equal housing opportunity logotype, statement, or slogan.	Amend fair housing policy and practices to ensure citizens are aware of how to obtain equal housing logos, statements, or slogans. The consequence of this proposed change is that citizens will be able to efficiently obtain information on the equal housing logos, statement, or slogan directly from the Virginia Fair Housing Office.
135-50-350	n/a	Sets forth how to determine the date on which a complaint is filed with the Boards.	Clarify the procedure for determining the date of filing for a fair housing complaint. This proposed change establishes that complaints received electronically or by telephone are considered filed upon receipt.

135-50-400	n/a	Establishes the administrator's delegated duties when investigating a complaint.	This proposed change clarifies that the administrator's duties include developing through investigations the facts necessary to make a "recommendation" with regard to a fair housing complaint rather than a "determination," since the latter is the Boards' statutory duty.
135-50-440	n/a	Sets forth the conditions under which an investigation will be considered complete.	This proposed change clarifies that investigations in which the alleged discriminatory practice involves the legality of any local zoning or land use ordinance are complete when the Board makes such a determination. This particular determination is not addressed in the current 135-50-440 regulation.

Enter any other statement here